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[Larry v. The Detroit Edison Co.](#), 86-ERA-32 (Sec'y May 19, 1992)

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DATE: May 19, 1992
CASE NO. 86-ERA-32

IN THE MATTER OF

CAROLYN LARRY,

COMPLAINANT,

v.

THE DETROIT EDISON COMPANY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

DECISION AND ORDER ON COSTS
AND EXPENSES, INCLUDING
ATTORNEYS' FEES

This case arises under Section 210 of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988). By order of June 28, 1991, the parties were permitted to brief the appropriateness of the Administrative Law Judge's (ALJ) fee assessment; counsel for Complainant was permitted to submit a petition for costs and expenses incurred on review; and Respondent was permitted to respond. Complainant's counsel filed a petition on August 23, 1991, together with a notice of intent to file certain procedural motions. Respondent thereafter responded. Complainant's intended motions have not been forthcoming.

Upon consideration, the following costs and expenses are approved:

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(1) In his April 17, 1987, Order Granting Fee Petition (appended), the ALJ recommended that Complainant's counsel Charles C. Taylor and Sam Thomas be awarded costs and expenses. The ALJ's disposition generally is reasonable, and I hereby adopt it as qualified below. The ALJ permitted compensation at an hourly rate of \$100 for 50 hours of pre-hearing preparation and 40 hours of hearing time (36 hours for Attorney Taylor and four hours for Attorney Thomas). The ALJ also permitted compensation

in the amount of \$350 for telephone conversations and drafting interrogatories on September 2 and 4, 1986, which represented 3.5 hours of work. Counsel also claim compensation for one half-hour of work on August 29, 1986. Total compensation appropriately should be ordered in the amount of \$9,400, i.e., 94 hours x \$100/hr. = \$9,400.

Respondent contests counsels' request for a 12 percent interest additur of \$6,738.90 in compensation for the delay in payment. I note that in Title VII actions against private parties prevailing complainants may recover interest on attorneys' fees. *Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 764 and n.6 (7th Cir. 1982). See *Library of Congress v. Shaw*, 478 U.S. 310, 313-314 (1986).

The lodestar fee may . . . be adjusted upward to compensate counsel for the lost value of the money he would have received resulting from delay in receipt of payment. "[T]he hourly rates used in the 'lodestar' represent the prevailing rate for clients who typically pay their bills promptly. Court-awarded fees normally are received long after the legal services are rendered." No precise formula is available to measure the delay factor. [W]here the hourly rate used in computing the lodestar is based on present hourly rates a delay factor has implicitly been recognized and no adjustment for delay should be allowed.

Nat. Ass'n of Concerned Vets. v. Sec. of Defense, 675 F.2d 1319, 1328-1329 (D.C. Cir. 1982) (citations omitted), quoting *Copeland v. Marshall*, 641 F.2d 880, 893 and n.23 (D.C. Cir. 1980) (en banc). In extrapolating from the Laffey Matrix possible current rates and comparing an adjusted lodestar, counsels' additur appears excessive. See Complainant's August 23, 1991, petition for fees and expenses at Exh. 3. In particular, 94 hours multiplied by \$130 an hour results in payment of \$12,220, whereas a \$9,400 lodestar and a \$6,738.90 interest additur results in payment of \$16,138.90. Accordingly, I consider a reduced adjustment to be appropriate and permit additional fees in the

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amount of \$3,000 to compensate counsel for delay in payment.

(2) Complainant's counsel Billie Pirner Garde and Donald G. Aplin request attorneys' fees in the amount of \$11,285. Respondent contests any award for hours billed in a separate proceeding. It appears from an examination of counsel's work-in-progress report that telephone conferences conducted on June 12, 1987, June 15, 1987, and January 19, 1988, were unrelated to the captioned case. Similarly, it appears that correspondence prepared on March 17, 1990, was not in furtherance of this litigation. Accordingly, the hours billed for Attorney Garde are reduced by 6.90 hours.

(3) Respondent contests as excessive the amount of time spent by Attorney Garde in completing Complainant's brief before the Secretary. Preparation entailed record review, legal research, and document preparation. In view of the length of the

case record and the number and complexity of the issues presented by the case, I find counsel's hours to be reasonable.

(4) Respondent objects to nine hours billed for work performed by Paralegal Sandra L. Shepherd. This work occurred on June 23, 1987, in the final stages of Attorney Garde's brief preparation and entailed primarily proofing and editing the document. Use of a paralegal for these purposes is reasonable, and the charges are approved.

(5) Certain supplemental secretarial costs, necessary travel expenses, and copying and telephone costs are reimbursable as part of an attorney's fee because they are "integrally related to the work of an attorney" and may significantly contribute to the success of the litigation. *Wheeler v. Durham City Bd. of Ed.*, 585 F.2d 618, 623-624 (4th Cir. 1978). Since such costs are recoverable as attorneys' fees, they are recoverable here where the statute makes clear that costs and expenses other than attorneys' fees are compensable. 42 U.S.C. § 5851(b)(2)(B). I, therefore, allow Complainant reimbursement for Federal Express and airfare charges, which constitute other litigation costs. See B. Schlei & P. Grossman, *Employment Discrimination Law*, five-year cum. supp., Ch. 39 at 553 and n.37 (2d ed. 1989).

(6) Complainant prevailed on her ERA claim and thus her attorneys are entitled to compensation for all hours reasonably spent in her representation. *Lamphere v. Brown University*, 610 F.2d 46, 47 (1st Cir. 1979); *Hughes v. Repko*, 578 F.2d 483, 486-487 (3d Cir. 1978).

(7) Counsel are entitled to compensation for time reasonably spent in preparing a fee claim, and Attorney Aplin's request is approved. *Coulter v. State of Tenn.*, 805 F.2d 146, 151 (6th Cir. 1986), cert. denied, 482 U.S. 914 (1987); *Jones v. MacMillan Bloedel Containers, Inc.*, 685 F.2d 236, 239 (8th Cir. 1982).

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ORDER

Respondent is ordered to compensate Charlie C. Taylor and Sam Thomas, Thomas, Taylor, and Houston, P.C., costs and expenses in the amount of \$12,400.

Respondent is ordered to compensate Billie Pirner Garde and Donald G. Aplin, Government Accountability Project, costs and expenses in the amount of \$10,965. This compensation represents attorneys' fees in the amount of \$10,595 and costs in the amount of \$370.

SO ORDERED.

LYNN MARTIN
Secretary of Labor

Washington, D.C.